THE HON'BLE SMT JUSTICE T.MEENA KUMARI

&

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.12990 OF 2007

Dated: 26.06.2007

Between:

A. Vijayamma

..Petitioner

And

1. The District Collector and Magistrate,
   Vizianagaram and another

.. Respondents.

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THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
&
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.12990 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

This is a writ petition filed by the petitioner challenging the order, dated 11.12.2006 passed by the A.P. Administrative Tribunal in O.A.No.8267 of 2002.

The petitioner herein is the applicant before the Tribunal.

Originally, the petitioner-applicant filed the above O.A., aggrieved by the proceedings dated 30.8.2002 issued by the 1st respondent cancelling her appointment as Cook in Government Social Welfare Hostel, Ravivalasa on the ground that the scheme of compassionate appointment to dependents of Government employees retired on medical invalidation was cancelled under G.O.Ms.No.202 and 203 dated 27.4.2002 and G.O.Ms.No.305, dated 17.7.2002.

The tribunal having observed that the appointment of any person on compassionate grounds on medical invalidation is bad in law, dismissed the O.A. Having aggrieved by the same, the applicant filed the present writ petition.

Heard the learned Counsel for the petitioner as well as the learned Government Pleader for Services-I and perused the material available on record.

It is the contention of the learned Counsel for the petitioner-applicant that the petitioner-applicant made a representation on 17.7.2000 seeking appointment on compassionate grounds and her husband died on 14.3.2002 and the authorities kept it pending for a

period of two years and ultimately, gave appointment on 9.7.2002 i.e., subsequent to the death of her husband. It is submitted that the above G.Os referred to above are subsequent to the representation and therefore, they cannot be made applicable to the present case on hand and apart from that, the husband of the petitioner died prior to her appointment and therefore, her appointment cannot be cancelled basing on the subsequent G.Os.

On the other hand, the learned Government Pleader contends that pursuant to the judgment of this Court, the Government issued the above referred G.Os cancelling the scheme of compassionate appointment and therefore, the proceedings challenged in the above O.A. were issued and there is no illegality or arbitrariness in the action of the respondents and hence, the order of the Tribunal does not warrant any interference.

Before going to deal with the present case on hand, it is relevant to note the facts of the case. The husband of the petitioner retired from service on medical invalidation on 11.2.2000 and subsequently, the petitioner-applicant made representations on 17.7.2000, 23.12.2000 and 31.3.2001 for appointment on compassionate grounds. Her husband died on 14.3.2002 and thereafter, the 1st respondent issued proceedings dated 9.7.2002 appointing her on compassionate grounds as Cook. Accordingly, she joined as Cook in Government Boys Hostel, Ravivalasa. Subsequently, on 30.8.2002 the 1st respondent issued proceedings cancelling her appointment on the ground that the scheme for compassionate appointment on medical invalidation was cancelled by the Government.

It is an undisputed fact that the petitioner-applicant was appointed on 9.7.2002 viz., subsequent to the death of her husband

and subsequent to G.O.Ms.No.202, dated 27.4.2002 issued by the Government dispensing with the scheme of Compassionate appointment to dependants of Government employees, who retired on medical invalidation. It is also an undisputed fact that prior to issuance of this G.O., the scheme was in existence and by that time, the representations made by the applicant are pending consideration and that the impugned proceedings were issued cancelling the appointment of the petitioner without giving any prior notice, which is violative of principles of natural justice.

In support of his contentions, the learned Counsel for the petitioner-applicant relied upon the judgment in **I.G. (Karmik) & others Vs. Prahalad Mani Tripathi**[1] wherein the apex Court held that

> *"An employee of a State enjoys a status. Recruitment of employees of the state is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the police department."*
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> It is also further held that:
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> *"It was noted In Umesh Kumar Nagpal V. state of Haryana that as a rule, in public service appointments should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family*

without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

Though the G.Os issued by the Government are in consonance with the guidelines of this Court, but, having regard to the crisis that has occurred in the family of the petitioner-applicant after the retirement of her husband and his death and in view of the principles of natural justice and in the light of the principles laid down by the Apex Court in the citation supra, We have no hesitation to hold that the case of the applicant will not come under the purview of the G.Os in question for the reason that the representations of the applicant are pending consideration even long prior to the issuance of the G.Os., and as such, the claim of the applicant-petitioner as to her appointment cannot be denied.

Hence, We feel that the tribunal is not justified in passing the order impugned. Therefore, the order impugned herein and the order issued by the authorities, are liable to be set aside.

According the writ petition is allowed setting aside the order of the Tribunal as well as the order impugned in the O.A. ,which was issued by the authorities. It is needless to observe that the applicant shall be reinstated into service with all consequential benefits. However, it is made clear that this order shall not be a precedent in other cases. No order as to costs.

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Justice T. Meena Kumari

Justice G.Chandraiah

Date: 26.06.2007
Nn/gurc

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
&
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.12990 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

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Dated: 26.06.2007

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[1] 2007(4) Supreme 256